

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-1050

20 Minutes

To Be Argued By:

ALBERT J. BRACKLEY

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 75-1050

UNITED STATES OF AMERICA,

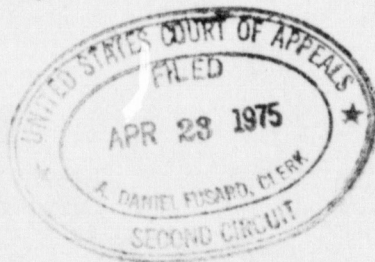
Appellee,

-against-

JOSEPH SCIANNAMEO,

Appellant.

APPENDIX



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PAGINATION AS IN ORIGINAL COPY

1
2 called numbers. And whether such a participation
3 was a financial source in connection with extortion,
4 extention of credit business. At the time and
5 place aforesaid, the defendant Joseph Sciannameo,
6 while under oath, did knowingly declare before the
7 aforesaid grand jury with respect to the aforesaid
8 material matter as follows:

9 "Question: Do you know what a runner is?

10 "Answer: That runs in the mile track?

11 "Question: In relation to the gambling
12 business?

13 "Answer: I don't know the gambling business."

14 The aforesaid defendant Joseph Sciannameo,
15 as set forth in paragraph 4 in this count was false
16 and known him to be false when made is a violation
17 of 18 U. S. Code, Section 1623."

18 Now, Section 1623 of the United States Code
19 claims to have been violated in this indictment.
20 It reads in part as follows, that is, the pertinent
21 portion of which is involved in this case with which
22 you are concerned, reads this way, Section 1623:

23 "False declarations before a grand jury or
24 the court: (A) Whoever under oath in any proceeding
25 before or ancillary to any court or grand jury of the

????

1
2 day.

3 Q Would he give slips of paper?

4 A He keeps records himself as to what his
5 collectors give him and how much is collected.

6 Q Have you ever participated in a gambling
7 stake-out?

8 A Yes.

9 Q Can you explain what a gambling state-out
10 means?

11 A A gambling state-out is where you keep a
12 particular location under observation for purposes of ascer-
13 taining whether illegal gamboing activity is taking place
14 at that location.

15 Q Have you ever participated in a stake-out
16 of Mary's Candy Store at 432A Fourth Avenue in Brooklyn?

17 A Yes.

18 Q Do you know who owns that store?

19 A Mary Sciannameo.

20 Q I direct your attention to December 5th, 1972.
21 Did you have occasion to go into Mary's Candy Store?

22 A Yes.

23 Can I look at my notes?

24 THE COURT: Yes.

25 Q Tell the jury what if anything occurred that

1
2 day.

3 A Yes.

4 On that day at approximately 1:15 I entered
5 Mary's Candy Store for purposes of seeing if the defendant
6 was inside and after entering the store I did observe the
7 defendant in the store.

8 He was standing in a rear room engaged in a
9 conversation with another male and I tried to stay in the
10 store as long as possible and made a purchase at the counter
11 and at the time I was making a purchase, the defendant and
12 the male walked up to the front of the store and I overheard
13 a portion of the conversation they were having. I can't
14 recall exactly who asked who what the number was but that
15 was the topic of the conversation -- what the number was
16 for the previous day.

17 Q The winning number?

18 A Yes.

19 Q Now officer, I'd like to call your attention
20 to Friday, December 15, 1972 at approximately 1:20 p.m.

21 Where were you?

22 A I was at 432 Fourth Avenue, Mary's Candy Store.

23 Q Did you enter the premises of Mary's Candy
24 Store?

25 A Yes.

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Q Were you alone or with other officers?

A With other officers.

Q Approximately how many other officers, if you remember?

A I was with six other officers.

Q And can you tell us what if anything occurred?

You entered the store; is that correct?

A Correct.

Q Can you tell us what if anything occurred when you entered the store?

A Yes.

After entering the store I walked to the rear of the store, the rear room. I opened the door and observed the defendant Sciannameo writing on a slip of paper in that rear room.

I recognized that slip of paper to be mutual race horse policy bets.

THE COURT: Just a slip of paper?

One little slip?

THE WITNESS: A sheet of paper with a piece of carbon and another sheet of paper directly underneath it.

THE COURT: A sheet of paper with a carbon underneath it, you say?

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2 THE WITNESS: Yes.

3 THE COURT: You say you recognized
4 that as something?

5 THE WITNESS: As policy bets, numbers.

6 THE COURT: All right.

7 Q What did you do next?

8 A I conducted a search of the rear room.

9 THE COURT: In his presence?

10 THE WITNESS: In his presence, yes.

11 Q Tell us what if anything you found as a result?
12 Did you bring the documents?

13 A Yes, I did.

14 THE COURT: Wait a minute.

15 Did you grab the documents?

16 THE WITNESS: I seized them. I seized
17 the various papers I recognized to be gambling
18 records and vouchered them in the police depart-
19 ment property clerk's office at a later time.

20 Q You brought these documents with you today?

21 A Yes.

22 Q Could you take them out?

23 (Witness complies)

24 Q Do you want to break the seal?

25 A Yes.

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A He was walking along with me.

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Q Was Mr. Levy in the back portion of the store with Mr. Sciannameo when you entered?

5

A No.

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7

Q So, I take it, the only person you saw in close proximity at all, with reference to the exhibits in evidence, would be Mr. Sciannameo?

8

9

A He was the only person in the rear room.

10

11

Q And that is where you claim you found the items?

12

A Yes.

13

14

Q And you arrested Mr. Levy and charged him with possession of each and every item that you are talking to Mr. Sciannameo about?

15

16

A That is correct.

17

18

Q Did you ever go back to the store with Mr. Levy sometime after he was arrested and brought to the station house?

19

20

A Yes, Mr. Levy and a sergeant.

21

22

Q And did you then bring back anything with you?

23

A No.

24

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Q You say everything you found was there when you entered the store?

A Yes.

1
2 about Mr. Levy bringing papers back to the stationhouse as
3 I understand it. There was an arrest and Mr. Doherty received
4 the papers. Were you there?

5 A Yes, sir.

6 THE COURT: And did Doherty receive the papers?

7 THE WITNESS: Yes, sir.

8 THE COURT: The papers were they on Mr.

9 Sciannameo?

10 THE WITNESS: Yes, sir.

11 THE COURT: Those papers that you just saw?

12 THE WITNESS: Yes, sir.

13 THE COURT: He brought them back to the station-
14 house?

15 THE WITNESS: Yes, sir.

16 THE COURT: Now, ask him whether Levy brought any.

17 Q But you arrested Levy for the possession of the
18 same papers, didn't you, sir?

19 A I did.

20 Q He was arrested?

21 A He was arrested, yes.

22 Q He wasn't sitting at any table with any papers?

23 A No. He was behind the counter.

24 THE COURT: Wait a minute, wait a minute.

25 There is no evidence whatsoever as to why Levy

MR. BRACKLEY: All right.

CROSS EXAMINATION

BY MR. BRACKLEY CONTINUING:

Q In any event, the material prior to December 15, does that have a terminology with respect to this gambling?

A Yes.

Q What is it called?

A That would be called "old work."

THE COURT: What does that mean?

THE WITNESS: Something that is not current, not for that particular day.

THE COURT: That is not an amazing description.

Q Now, it is your testimony -- what did you say that the person in Mary's would have to be, a controller or collector or what? What was that terminology?

A A controller.

Q And a controller in the terminology you use, has the old work laying right in front of him so you can walk in and seize it?

A No sir. That would be pretty stupid --

THE COURT: Now, he did not testify that way and you are arguing. He never said

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2 it was put on the desk so he could walk
3 in and see it.

4 MR. BRACKLEY: Yes. I used that
5 terminology. I did. I'm sorry.

6 THE COURT: If you want to argue
7 you can argue. =

8 MR. BRACKLEY: I'll wait.

9 Q You are saying that when you went in the
10 defendant was sitting at the table with this material in
11 front of him?

12 A Right.

13 Q Some of it was new and some of it was old;
14 the new being December 15 and the old being anything prior
15 to that?

16 A Right.

17 Q In any event, you say that other people would
18 come in and go out of the store ?

19 A During the course of a day, sure.

20 Q So, you wouldn't actually be able to produce
21 anyone who brought any of these items into the store; is
22 that right?

23 MS. KATZ: I object.

24 THE COURT: He doesn't have to produce
25 anyone. Of what relevance is it?

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2 Q Do you know any individuals that brought into
3 that store, if it was brought into the store, any of the
4 items you are testifying to now?

5 MS. KATZ: I object again, as
6 irrelevant.

7 THE COURT: Well, I'll let him
8 ask it.

9 A I don't know anybody.

10 Q And I take it the only direct connection --

11 THE COURT: After all, you are
12 supposed to be cross examining this man
13 on the direct examination.

14 MR. BRACKLEY: That's right, Judge.

15 THE COURT: Now you want to bring out
16 something else which was not brought out on
17 direct examination to wit, whether he knows
18 of certain so-called runners who brought
19 these slips into the store.

20 MR. BRACKLEY: No, only the specific
21 slips seized on the 15th.

22 THE COURT: That is the same thing.
23 That is what we are talking about.

24 Q In any event --

25 THE COURT: He never testified that

1
2 he knew the runners or saw any runners.

3 MR. BRACKLEY: I believe he testified
4 here that he does not know anybody.

5 THE COURT: He testified again and
6 again that that wasn't -- an objection
7 was made that it didn't make a difference
8 whether he knew runners or not.

9 The question is, did the man know
10 the gambling business. That's all.

11 Q I take it the only direct observations you
12 made of Mr. Sciannameo with respect to the items here is
13 that you saw him writing on a piece of paper; is that
14 correct?

15 A That is correct.

16 Q The other items were laying on the table?

17 A Correct.

18 Q So therefore, it is your testimony that he was
19 actually writing on a piece of paper?

20 A Correct.

21 Q But you don't know what he was writing?

22 A No.

23 Q But you testified at one time you knew what
24 he was writing?

25 A I testified to that fact going on an assumption

1
2 that he was writing something and when I write on a piece
3 of paper the last thing on that piece of paper is the last
4 thing going from left to right and that is the basis I
5 testified on.

6 Q You knew as a police officer you are not per-
7 mitted to testify to anything except facts other than your
8 expertise ?

9 A It was fact to me.

10 Q But you knew, as a police officer, if you could
11 connect this man personally to a piece of paper that could
12 sure be evidence against him?

13 A I know that.

14 Q Now sir, do you recall December 26, 1973 at
15 prior proceeding being asked these questions --

16 THE COURT: Wait a minute.

17 In what court?

18 MR. BRACKLEY: The Supreme Court,
19 State of New York, County of Kings.

20 THE COURT: What is the title of
21 the proceeding?

22 MR. BRACKLEY: It was a criminal
23 case, Judge.

24 THE COURT: We have to know if it is
25 a proceeding in which the man who is testifying,

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2 if it involves the defendant.

3 MR. BRACKLEY: Yes. People of
4 the State of New York against Joseph
5 Sciannameo.

6 THE COURT: Do you have objection
7 to this?

8 MR. WEINTRAUB: I request a side
9 bar to discuss it.

10 THE COURT: That's not an objection.
11 It is a request. All right.

12 (Side bar discussion)

13 THE COURT: Do you have a copy?

14 MR. WEINTRAUB: Yes.

15 MR. BRACKLEY: In the trial of the
16 defendant, this witness testified he specifically
17 saw this man writing number 204.

18 THE COURT: That doesn't say "specifically
19 saw." You said that. That's where I am
20 going to stop you. He doesn't use the word
21 "specifically."

22 MR. BRACKLEY: Well then, let me read
23 in what I am talking about.

24 "What did you see him write?

25 "Number 204 for three dollars.

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2 "Q. You testified that you were right there
3 next to the defendant and now you are guessing what the
4 defendant did. Are you telling us what you saw him writing?

5 "A. He was writing numbers. He would have
6 to be writing the last number.

7 "Q. What did you see him write?

8 "A. Number 204 for three dollar combinations."
9 Do you recall giving those answers to those
10 questions?

11 A Yes.

12 Q Did you ever see this man write 204 for a
13 three dollar combination?

14 A As I testified before --

15 Q Sir --

16 THE COURT: Let him answer.

17 A (continuing) As I testified before I assumed
18 the last number in the column was what he was writing and
19 I think it's a very --

20 Q Very what, sir?

21 A Common sense.

22 Q Weren't you asked specifically what you saw
23 him doing and you knew, didn't you, that you had to connect
24 him with a specific piece of paper?

25 THE COURT: As I understand it there

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2 was a seizure of papers on this man's desk
3 right next to the man.

4 MR. BRACKLEY: Correct.

5 THE COURT: Now the rest is a matter
6 of inference and you are now making a state-
7 ment that it was absolutely necessary that
8 this particular piece of paper be connected
9 to the writing of this man and I don't believe
10 that is the law.

11 MR. BRACKLEY: That is not the question,
12 Judge.

13 Q When you were testifying, did you intend
14 to connect this man with a specific piece of paper?

15 THE COURT: I'll take that.

16 A It was my intention, of course.

17 Q Is that why you stated "number 204 for three
18 dollar combinations"?

19 A I stated it was 204 because in my mind I know
20 that is the number he was writing. I stated it was an assump-
21 tion.

22 THE COURT: Well, do you know that
23 what the last number he was writing? That's
24 what you said.

25 THE WITNESS: I don't know. I am

1
2 assuming that.

3 Q Sir, as it developed you didn't even know
4 whether he was writing on the top of the paper or bottom
5 of the paper; is that correct?

6 A I know he was writing on the paper.

7 Q But knowing that you still went into a court,
8 under oath and testified you saw him write number 204 for
9 three dollar combinations?

10 A That's what I said.

11 Q And now you know that it is not what you
12 actually saw, sir, isn't that correct?

13 THE COURT: Well, he doesn't know
14 that either. =

15 Q Do you recall being asked this question and
16 giving this answer on page 76.

17 "Q. Well, he could have been writing on the
18 top too, could he not?

19 "A. Yes sir, he could."

20 Did you answer that sir?

21 A He was writing on the paper.

22 Q Sir, did you answer that question in that way
23 under oath?

24 MR. WEINTRAUB: I am going to object.

25 THE COURT: There is nothing inconsistent

1
2 about that.

3 Q Where on the paper does number 204 appear?

4 A The last figure in the last column.

5 Q The top or bottom of the paper.

6 A A little above the center of the paper.

7 MR. WEINTRAUB: I have to object.

8 The inquiry is far beyond the bounds.

9 Q Question on page 75.

10 "Q. Is that what you referred to before" --

11 THE COURT: Is this going to be --

12 MR. BRACKLEY: The last question.

13 THE COURT: Is it going to have to
14 do with the direct testimony?

15 MR. BRACKLEY: It is the same incon-
16 sistency. I am reading right through.

17 THE COURT: What you are doing is
18 arguing.

19 The jury is going to decide all this,
20 not you.

21 MR. BRACKLEY: I understand that, Judge.

22 THE COURT: Now, let's see what the
23 question is.

24 Q Page 75, were you asked this question and did
25 you give this answer?

1
2 "Q. You used the wrong words?

3 "A. He wrote that last number."

4 Do you recall giving that answer to that
5 question under oath in the state court?

6 A If that is in the minutes, then that is what
7 I said. I have no direct recollection of it.

8 Q Now sir, do you know whether he was writing
9 on the top or bottom of that paper?

10 A I don't know exactly where he was writing, no.

11 THE COURT: Did you see him writing
12 on the paper?

13 THE WITNESS: Yes. I saw him writing
14 on that paper.

15 THE COURT: You are sure of that?

16 THE WITNESS: Positive. That's not
17 an assumption.

18 THE COURT: That is not an assumption?
19 You saw him writing on that piece of paper?

20 THE WITNESS: That is correct.

21 Q But you did take the specific time to testify
22 that he wrote a specific number, did you not, sir?

23 THE COURT: Yes. We have gotten over
24 that.

25 Q Now, have you ever been to 397 5th Avenue?

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2 A I don't believe so.

3 Q Do you know presently or as of January, 1974,
4 where Mary's Stationery Store was located as of January, 1974?

5 THE COURT: Wait a minute. I don't
6 see the relevance of this.

7 As I understand it, these papers were
8 seized at Mary's Candy Store at 442 -- was
9 it 432 Fourth Avenue?

10 MR. BRACKLEY: The Grand Jury --

11 THE COURT: We don't care about the
12 Grand Jury. I am not going to let confusion
13 be introduced into this case.

14 The question is, was he engaged in the
15 gambling business. Did he know that at the
16 time he was questioned before the Grand Jury.
17 That's the question.

18 I don't care where Mary's Candy Store
19 was located at the time he was questioned.
20 The real issue is, did he know anything about
21 the gambling business.

22 MR. BRACKLEY: I don't believe that
23 is the real issue. It is an issue. But,
24 the real issue is when questioning him, was
25 it about this store or the present store.

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2 THE COURT: No, it is not so.

3 They don't say "Did you know that
4 gamboing was going on at Mary's Candy Store
5 on 6th or 7th Avenue."

6 MR. BRACKLEY: Can we leave that as
7 a question for the jury?

8 THE COURT: That might well be --

9 MR. BRACKLEY: I am just asking your
10 Honor to let the jury determine that.

11 THE COURT: You have to look at what
12 the indictment says and the questions and
13 answers.

14 We will have to read all the testimony
15 of this defendant and they'll decide whether
16 or not he intended to and intentionally made
17 a false statement.

18 MR. BRACKLEY: That's why we are here,
19 Judge.

20 THE COURT: Well, the way you point it
21 out, what you state is, whether this man ever
22 went to the 397 Candy Store. He wasn't even
23 in the Grand Jury when the question was asked.

24 MR. BRACKLEY: That's the point I am
25 trying to make.

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3 THE COURT: Well, it is an irrelevant
4 one. I don't think that is relevant at all.

5 MR. BRACKLEY: I have to object.

6 THE COURT: Well, I have to rule.

7 MR. WEINTRAUB: If we discuss this,
8 perhaps, outside the presence of the jury --

9 THE COURT: That is true.

10 MR. BRACKLEY: I am finished with
11 the witness but I want to tell your Honor
12 that the jury --

13 THE COURT: Don't tell me about the
14 jury.

15 I said your questioning of him as to
16 where Mary's Candy Store was at the time he
17 was brought to the Grand Jury is irrelevant.

18 I repeat that statement and I tell
19 the jury that is irrelevant to the issues
20 in this case as far as this man is concerned.

21 Did you ever go to the old/new candy
22 store?

23 THE WITNESS: I don't believe so.

24 THE COURT: How far away from the
25 old candy store is the new candy store? Does
anybody know?

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2 A Yes.

3 Q Do you know whether or not Mr. Levy had been
4 arrested that day?

5 THE COURT: Aren't we going far afield? It's
6 a simple question of perjury or not before the grand
7 jury, that's all.

8 MR. BRACKLEY: I don't think it's far afield.

9 THE COURT: I think we are. We're going into
10 arrests and all that thing. We haven't really reached
11 the issue here yet, have we?

12 MR. BRACKLEY: I think we're on the issue, Judge.

13 THE COURT: Well, we have to hurry up.

14 Q In any event, sir, do you recall whether or not
15 Mr. Levy was ever brought back to the store and that's when he
16 brought those items back to the stationhouse? That's all I
17 want to know.

18 THE COURT: What items back to the stationhouse?

19 MR. BRACKLEY: Any papers with Mr. Levy.

20 THE COURT: There has been no testimony Mr. Levy
21 brought any papers back to the stationhouse.

22 MR. BRACKLEY: That's the question I'm asking,
23 Judge.

24 THE COURT: You're making him your direct
25 witness, because there is nothing in direct testimony

1
2 A No, sir.

3 Q What would that be about?

4 A I'd say 3 and a half, 4 feet.

5 Q That would permit one person at a time to go
6 down or could two go alongside of each other? Could you
7 state, could you recall it?

8 THE COURT: Are you talking about the passageway?

9 MR. BRACKLEY: Yes. The back room. Yes, Judge,

10 I am.

11 THE COURT: He says 3 feet wide. 3 and a half
12 feet.

13 THE WITNESS: Yes.

14 Q Do you, from your recollection, would you feel,
15 do you state that you were all going in single file towards
16 that back room?

17 A Yes.

18 Q Now, at any time that you were either in the
19 store or ordering your tea and cake, did you ever see Mr.
20 Levy go to the back room?

21 A No, sir.

22 Q At the time you entered the store and went into
23 the back and saw Mr. Sciannameo there, did you see Mr. Levy
24 in the store?

25 A Yes, sir.

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Q And he was saying something as you were going down the passageway?

A He was back of the counter walking parallel with us as we were going towards the back room.

Q When for the first time did you announce that you were the police? If you did or not.

A When I announced?

Q Could you hear it being announced at all?

A Yes. Police Officer Doherty announced it. He had the shield up when he went in the store.

Q From the moment you opened the door and from the street until the trip down the passageway they had identified themselves as police? Did you understand the question?

A He was inside when he announced himself. Like he didn't have his shield on the outside of the door when he got in the door and stepped in, he identified himself as a police officer.

Q That's the doorway going into the store, not the doorway going in the back room?

A Yes.

Q Then, everyone came in after him and they got in as quickly as they could going down to the back portion of the store?

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2 was arrested.

3 Now, we're not going to bring that in here
4 because there is a question of law perhaps involving
5 constructive possession. These are the actual possessions
6 and we are not going to confuse this issue before this
7 jury with that problem. Now, you get to your real
8 issue and I'm not going to permit it.

9 Q Do you know, whether or not --

10 THE COURT: Levy's got nothing to do with this
11 case.

12 MR. BRACKLEY: I believe he does.

13 THE COURT: Proceed.

14 Q Approximately how long would you say it took
15 from the time Patrolman Doherty first entered the store until
16 the time he got to the rear room where Mr. Sciannameo was
17 seated?

18 A I'll say within 3 to 5 seconds.

19 MS. KATZ; Thank you, no further questions.

20 THE COURT: Thank you very much, please step
21 down. Next witness.

22 MS. KATZ: I ask this be marked for identification.

23 THE COURT: What is it?

24 MS. KATZ: It's the grand jury minutes.

25 THE COURT: All right. Show it to Mr. Brackley.

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THE COURT: Now, that has been the law for many, many years.

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MR. BRACKLEY? I understand that.

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THE COURT: So, no problem; it works out.

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MR. BRACKLEY: But I am trying to explain the way it -- I think you understand.

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In any event, she then can go on and give her own summation and sit down. When she sits down, I don't get up and answer her again what she says, but you can answer her summation and you can answer mine because the factual determination in this case will be yours.

When the Assistant District Attorney sits down, the Judge then, as he indicated, will instruct you on the law. The law is not evidence of innocence or guilt; it is the rules by which the trial is conducted. When the Judge defines perjury, I don't believe he means this is what the man did. It is for you to determine from every fact and circumstance in this case, take it in context, not just four lines out of a grand jury proceeding and call those four lines perjury. Everything in a criminal trial must be taken into context.

The Judge tells you the so-called rights of

2 fact and then have him say well, I just didn't mean
3 to do that.

4 Ladies and gentlemen, it is a significant
5 point because of this. This testimony of Mr.
6 Sciannameo prior to the trial, from which again
7 nothing is to be drawn from, it's not been disposed
8 of and it is still pending. The fact he went to
9 tria is no evidence of any guilt that he has here.
10 Those are things very carefully separate from this
11 case, but this police officer testified under oath,
12 "What did you see him write?

13 Answer: "No. 20443 dollar combination."

14 THE COURT: Wait a minute, wait a minute,
15 wait a minute. You are talking about the testimony
16 in the prior trial.

17 MR. BRACKLEY: That's correct.

18 THE COURT: Yes, that's right.

19 MR. BRACKLEY: Question: "You use the wrong
20 words, he wrote that last number."

21 That, ladies and gentlemen, was testimony
22 under oath against Mr. Sciannameo by the arresting
23 officer. Why is it of significance now, the ar-
24 resting officer admits he didn't write him any note.
25 The arresting officer is doing him a favor. The

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2 Has that been done here, ladies and gentle-
3 men? No. Has the pen been seized, ladies and
4 gentlemen? No. Can you draw any inference here
5 he was never seen writing anything such as Hawkins
6 says, and he comes right in afterwards? No.

7 Then where would anybody say he was writing
8 anything? To connect him directly with the papers
9 upon which he was arrested, a man, Mr. Levy, a man,
10 Mr. Levy, you know, was put back to the store for
11 what nobody knows because apparently it is not rele-
12 vant to know why the police take Mr. Levy back to
13 the store.

14 Then they come in with new work.

15 MS. KATZ: Objection.

16 THE COURT: Yes, objection sustained. I
17 told you before, Mr. Brackley, this was absolutely
18 irrelevant.

19 MR. BRACKLEY: Well, in any event --

20 MS. KATZ: In addition, your Honor, there
21 is no testimony to that effect.

22 THE COURT: No, there is no testimony about
23 that. Now, we mustn't get mixed up in this case.
24 The only issue here, as I see it, is whether the
25 defendant perjured himself before the grand jury.

2 MR. BRACKLEY: That's correct. That is
3 simple.

4 THE COURT: Now, what happened to Mr. Levy at
5 432A Fourth Avenue is absolutely immaterial, isn't it?

6 MR. BRACKLEY: I don't think so, Judge, but
7 if you rule --

8 THE COURT: I rule that it is.

9 MR. BRACKLEY: You can rule, all I can do is
10 argue.

11 You know when they say it is not testimony
12 and there is nobody testifying, Mr. Levy did this,
13 or nobody testified.

14 THE COURT: Now, I just ruled on that. You
15 just keep Mr. Levy out of this case. I will tell
16 the jury to ignore --

17 MR. BRACKLEY: Ignore Mr. --

18 THE COURT: Ignore Mr. Levy.

19 MR. BRACKLEY: He was part of the testimony.

20 THE COURT: I don't seem to make myself clear,
21 I am sure, but I try very hard. Now, Mr. Brackley --

22 MR. BRACKLEY: Yes, Judge.

23 THE COURT: No more about Mr. Levy, under-
24 stand?

25 MR. BRACKLEY: I have to accept, Judge,

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2 because he was part of the testimony. I think I
3 have a right to argue from the testimony but I will
4 abide by your ruling. But I want an exception.

5 THE COURT: I would suggest that you do abide
6 by that ruling immediately.

7 MR. BRACKLEY: I certainly will.

8 In any event, when you now are going to deter-
9 mine this man's responsibility before a grand jury,
10 you must determine the credibility of the people
11 that claim he is an expert or he knows the gambling
12 business, because that is what this is all about,
13 isn't it. Patrolman Doherty, Patrolman Hawkins
14 tell you what happened on the 15th. If you believe
15 them, then you believe he knows the gambling business.

16 That's a simple right but can you imagine,
17 ladies and gentlemen, if Mr. Scieannameo testifies
18 before any grand jury that he saw somebody write
19 204 combinations, in fact he didn't see anybody
20 write the \$2 combination, whatever it is.

21 What the other charge would be against Mr.
22 Sciannameo, that charge of perjury there, too,
23 wouldn't he because it's serious, you don't get up
24 on the witness stand and testify that you saw some-
25 body do something when in fact you didn't see him

2 And they are not talking - we are not putting
3 it in the sense of insanity here, ladies and gentle-
4 men - when he walks in there on January 15th, all
5 of this is known whether or not the Government ques-
6 tioned him in such a manner, if you determine that
7 to pick one, two lines and say he is a perjurer.
8 It is for you to determine and that's why although
9 they say it's a simple issue, it is a deadly
10 serious issue for this man.

11 He went down there, and he had to go down and
12 he was subpoenaed to. Never had to answer a ques-
13 tion. He said he would answer a question, which
14 brings us to the other point.

15 THE COURT: Now, what is this? He doesn't
16 have to answer before the jury.

17 MR. BRACKLEY: I don't believe so.

18 THE COURT: Before the grand jury, of course,
19 he does. You know that.

20 MR. BRACKLEY: He didn't take his privilege
21 on those questions.

22 THE COURT: But are you saying he could have
23 claimed the Fifth Amendment?

24 MR. BRACKLEY: That's right.

25 THE COURT: You want the jury to believe that

1 he had a right?

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3 MR. BRACKLEY: He did have a --

4 THE COURT: To Claim the Fifth Amendment.
5 There was a reason for it, that's what you want the
6 jury to believe? That's all right, if that is
7 what your argument is.

8 MR. BRACKLEY: But he didn't -- he didn't
9 claim the Fifth Amendment.

10 THE COURT: But he didn't give up anything?

11 MR. BRACKLEY: That's correct, Judge.

12 THE COURT: He didn't give up a thing unless
13 he had reason to claim the Fifth Amendment.

14 MR. BRACKLEY: That is absolutely correct.

15 THE COURT: All right.

16 Well, the jury is going to be kept advised
17 as to the issues here.

18 MR. BRACKLEY: Those are the issues we are
19 talking about -- the testimony before the grand jury
20 and it it is properly brought before the grand jury,
21 and he testified that is the issue, you have to find
22 out now whether he perjured himself. We are going
23 into that right this very minute.

24 THE COURT: It has been a half an hour be-
25 fore you reached that point.

MR. BRACKLEY: Can I give my summation?

THE COURT: You can't do it unless you do it within the proper bounds, Mr. Brackley.

MR. BRACKLEY: I don't think it is the proper bounds.

THE COURT: I am not going to take any more argument. You know what I am talking about.

MR. BRACKLEY: Yes, I do.

THE COURT: Then proceed accordingly.

MR. BRACKLEY: In any event, you come now to January 15, 1974, which is the appearance before the grand jury, which shows how Mr. Sciannameo was charged with perjury: "Question: Where do you reside, sir?

"Answer: 611 East 38th Street in Brooklyn.

"Question: Do you have an attorney?

"Answer: Outside.

"Question: Yes?

"Answer: No.

"Question: You do know you have a right to remain silent; anything you say can be used against you. You have a right to an attorney and if you can't afford one, one will be appointed for you.

"Do you understand that, sir?

1 "Answer: I do."

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3 Now, it becomes important when you are talking
4 about the state of mind, wilfully lying. This is
5 what this is all about, a wilful lying and perjury;
6 knowing of those things existing when he goes in;
7 they know it; he knows it.

8 "Are you employed, sir?"

9 THE COURT: Wait a minute. Was there testi-
10 mony to that fact?

11 MS. KATZ: Excuse me, your Honor?

12 THE COURT: Was there testimony in this case
13 that the time that Sciannameo went to the grand jury,
14 he knew that those papers were in the possession of
15 the United States Attorney. Is there anything in
16 the trial to indicate that?

17 MS. KATZ: No, your Honor.

18 THE COURT: No? There is none whatsoever?

19 Now, you must argue only from the evidence
20 that is brought out in this trial.

21 MR. BRACKLEY: You can infer, if you want,
22 from any of the testimony.

23 THE COURT: You cannot speculate. You infer
24 only from evidence and inference must be a reasonable
25 one.

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2 MR. BRACKLEY: I leave it to you, ladies and
3 gentlemen, as to whether or those documents were
4 available as --

5 THE COURT: There is no evidence there was.
6 You can't supply evidence by inferences unless there
7 is the basis for the inference.

8 Now, you keep to the evidence in this case.

9 MR. BRACKLEY: I am trying to do that, Judge.

10 THE COURT: No, you are not.

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1 MR. BRACKLEY: In any event; "Question: Are
2 you employed, sir?

3 "Answer: Yes, I am.

4 "Question: Where?

5 "Answer: The subpoena called for Mary's
6 Stationery. Is that what it calls for? I don't have
7 to answer that question I don't think."

8 Subpoena in evidence is for Mary's Stationery.
9 They want to be very precise in what's perjury and
10 what's not perjury.

11 THE COURT: Gentlemen --

12 MR. WEINTRAUB: I hate to interrupt, but if
13 he's going to refer to the subpoena, I think the
14 subpoena should be read as it exists, not just a
15 characterized --

16 THE COURT: Is the subpoena in evidence?

17 MR. BRACKLEY: Yes, Judge.

18 THE COURT: Well, he can pick out whatever he
19 wishes, the jury will have the whole subpoena before
20 it. It can read.

21 MR. BRACKLEY: Mary's Stationery, Brooklyn,
22 New York: Search Warrant, Mary's Stationery. You
23 may not think it's significant, we have states of
24 mind here trying to willfully perjure people; that's
25 what we have here but you look to all the facts and

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2 ladies and gentlemen, who is asking the questions,
3 all right. Now, he's the one that propounded all
4 those questions. So, he knows whether he is going
5 to accept the ground rules set forth by Mr.
6 Sciannameo which they don't have to accept or not.

7 Again, it goes to the attempt to willfully
8 lie and perjure themselves before the grand jury.

9 "Right", he says, all right? Now, they under-
10 stand each other, "Mary's Stationery, this is 1974,
11 it's on 397 Fifth Avenue." We understand each other,
12 is that right, Mr. United States Attorney? Why
13 aren't you going to answer?

14 MR. WEINTRAUB: No reference to 397.

15 THE COURT: No reference in there?

16 MR. WEINTRAUB: What he just read.

17 THE COURT: No reference in there?

18 MR. BRACKLEY: Yes, there is, Judge.

19 THE COURT: No. From that statement you're
20 reading right then and there.

21 MR. BRACKLEY: Page 3, no, Judge.

22 THE COURT: Then, you should not read into
23 that.

24 MR. BRACKLEY: I'm arguing, Judge, from what
25 the --

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2 THE COURT: Not both but not in the proper
3 way. You ought to tell the jury while it doesn't
4 say that, state that, your argument is that he had
5 a right to believe.

6 MR. BRACKLEY: That's correct.

7 THE COURT: But that isn't what you said.

8 MR. BRACKLEY: That's what I meant to say.

9 THE COURT: No, you should read exactly what's
10 there, nothing else.

11 MR. BRACKLEY: "Question: That's all you're
12 going to answer? Are you saying you will not answer
13 because -- " And then there is an interruption.

14 "Answer: I'm only to answer -- I'm only pre-
15 pared to answer what the subpoena calls for. It
16 says pertaining to Mary's Stationery.

17 "Question: Why aren't you going to answer?

18 "Answer: I'm not prepared to.

19 "Question: You aren't prepared.

20 "Answer: I'm not prepared.

21 "Question: How will you be prepared? Tell us
22 if you can. Please explain to the grand jury. Is it
23 because you wish to have your attorney?

24 "Answer: I don't think I'm capable of
25 answering all the questions of Mary's Stationery."

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3 Now, they continue questioning him to
4 Mary's Stationery. They do not have to ask a question
5 at all at that point. They say we'll ask the
6 questions and you answer them. If you don't want to
7 answer them or whatever you want to do, but we'll
8 ask the questions.

9 Now, when they continued to ask the questions
10 past that point, this is no cat and mouse, ladies and
11 gentlemen. You just can't take one or two lines out
12 and call the man a perjurer. But this is now what
13 they intend to do which is to question him about
14 Mary's Stationery. Which I think, the evidence is
15 indicated from the grand jury testimony while we
16 will read as of the date of the subpoena, was over
17 on 3/9/75.

18 Now, they begin --

19 THE COURT: You've got 10 more minutes.

20 MR. BRACKLEY: Ten more minutes.

21 THE COURT: Yes. You can't stay here all day.
22 We'll give you 15.

23 MR. BRACKLEY: Thank you very much, Judge. I'm
24 very appreciative of that.

25 Now, they start asking questions;

"Question: Do you work at Mary's Stationery?"

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2 THE COURT: What's the basis of this? This
3 is just an argument, he doesn't say they had.

4 MR. WEINTRAUB: There is no requirement that
5 that procedure be followed.

6 MR. BRACKLEY: It's the middle of my summation,
7 Judge.

8 THE COURT: At that time, as I understand, it
9 was the state that had those documents rather than
10 the Federal Government; is that right?

11 MR. WEINTRAUB: According to the officer's
12 testimony they were vouchered in the office of the
13 Property Clerk.

14 THE COURT: The Property Clerk of the --

15 MR. WEINTRAUB: State.

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2 THE COURT: Not the Federal Government. Now,
3 you may close in argument it is proper for the Govern-
4 ment to point out just that there is no evidence that
5 the Government had those.

6 MR. BRACKLEY: Well, Judge --

7 THE COURT: No Judge at all. You go ahead and
8 I don't want to argue with you. Proceed.

9 MR. BRACKLEY: This officer testified before
10 the grand jury, Judge.

11 THE COURT: They didn't have those.

12 MR. BRACKLEY: He testified before the grand
13 jury and I don't think there should be anybody misled
14 here.

15 THE COURT: Wait a minute. Wait a minute.
16 The officer testified before the grand jury.

17 MR. WEINTRABU: The officer testified before
18 the grand jury and none of those documents were
19 introduced.

20 THE COURT: That's right.

21 MR. BRACKLEY: But he testified.

22 THE COURT: How do you know he had them?

23 MR. BRACKLEY: Had his testimony.

24 THE COURT: No. There is no testimony he
25 had them before the grand jury. Now, I am not going

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2 version of missing pens; and their versions of why
3 they, under oath, changed their testimony.

4 If you find that they changed their testimony,
5 if all of those are significant, you heard the intro-
6 duction of the grand jury. You heard the fact the
7 defendant is talking about the stationery. If you
8 find those answers literally taken out of the word,
9 there isn't anybody that couldn't be convicted of
10 perjury by that who doesn't know the gambling busi-
11 ness. Who, after hearing the policeman, doesn't
12 know the gambling business.

13 MS. KATZ: I object.

14 THE COURT: What policeman?

15 MR. BRACKLEY: Policeman Doherty.

16 THE COURT: That doesn't mean he testified in
17 front of this man at the grand jury.

18 MR. BRACKLEY: Prior to trial, Judge.

19 THE COURT: No. Well, now, that wasn't
20 brought in evidence. That is my whole objection to
21 your summation that you refer to things that are not
22 in evidence.

23 MR. BRACKLEY: Well --

24 THE COURT: Now, no inference whatsoever, I
25 told you this once before; that this case is going

THE COURT: No, no. Let me
get the truth here so I understand it at
least then all of us can understand it.

Give us a date Mr. Sciannameo
when Mary's Candy Store was moved. That
is a simple solution. Do you know? You
don't have to say anything --

DEFENDANT SCIANNAMEO: It's about
a year after the arrest, your Honor.

THE COURT: That would be December 15,
1973?

DEFENDANT SCIANNAMEO: Yes, around
then.

THE COURT: Now, we have the December
15, 1973 date.

December 15, 1973, the candy store
was moved.

MR. BRACKLEY: Yes.

THE COURT: January, 1974, the Grand
Jury testimony was taken; right?

MR. BRACKLEY: Yes, Judge.

THE COURT: Now, the seizure, however,
was December 15, 1972?

MR. BRACKLEY: Yes, Judge.

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2 He is presently -- he had been
3 indicted for the very same charge, the
4 subject of this inquiry. He received a
5 hung jury in the State Court and is about
6 to be re-tried there as soon as we finish
7 here.

8 THE COURT: For the same offense?

9 MS. KATZ: For gambling, not perjury.

10 MR. BRACKLEY: I don't think I would
11 let him testify before a jury, Judge but I
12 do think, on the issue of perjury, if his
13 position were accepted at all, it would be
14 accepted by a Judge as the trier of both
15 facts and law, more readily than it might
16 be to a jury because he would be bound by
17 only an argument based on the sufficiency
18 or insufficiency of the questions asked of
19 him.

20 For those reasons the defendant is
21 willing to waive his right to a jury trial.

22 THE COURT: I am not too sure that
23 I would be willing to consent to it, if I
24 have anything to say, for this reason, Mr.
25 Brackley:

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2 I believe in all these criminal
3 cases, a defendant would feel better if
4 he is tried before a jury, if he happened
5 to be convicted.

6 Now, Rule 23 C says in a case tried
7 before the Court -- let me see -- where does
8 it say without a jury -- do you have the
9 Rule, gentlemen?

10 MR. WEINTRAUB: I'm sorry. We don't
11 have it, your Honor.

12 THE COURT: Well, we have it.

13 He might feel better one way or the
14 other. I don't know.

15 MR. BRACKLEY: It is not that he feels
16 better but he has an opportunity to explain
17 himself for as if he could explain himself
18 on that narrow issue to the jury, perhaps
19 he would be in a good position. However,
20 because of cross examination he may not be
21 as credible on the narrow issue before us
22 as he would be before your Honor.

23 Judge, I like juries too and probably,
24 this would be the second case I ever waived
25 in my entire life. But, I know, on the issue

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2 involved here, he cannot really explain
3 himself to a jury -- and I don't know that
4 he can explain himself to a Judge -- but
5 as to the issue before the Court, it might
6 be that -- even though he were convicted --
7 it might be that the chance to gain acquittal
8 would be to explain the facts and circumstances
9 to the Court rather than to twelve jurors who
10 would be considering other aspects of the case
11 rather than the one narrow issue.

12 THE COURT: No. I have to approve it
13 under 23 A.

14 MR. WEINTRAUB: No objection, your
15 Honor.

16 THE COURT: Perhaps he is willing to
17 be tried by a jury of six?

18 MR. BRACKLEY: It is not a question
19 of how many.

20 THE COURT: Are you trying to say that
21 if tried by a jury he would not take the stand
22 and without a trial by jury he would take
23 the stand?

24 MR. BRACKLEY: Yes.

25 If before the jury and if he was

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2 questioned about the matter in State Court,
3 I advised him that he has a right to take the
4 5th Amendment on that specific area and a
5 jury may not appreciate that.

6 THE COURT: I thought you said you
7 would not let him take the stand, anyway.

8 You mean, if it was without a jury
9 and he would take the 5th Amendment --

10 MR. BRACKLEY: As to the bag of
11 gambling apparatus.

12 I think he has a reason for answering
13 as he did with respect to 397.

14 THE COURT: What are you talking about?

15 MR. BRACKLEY: The address of the store
16 -- if it makes any sense at all -- in the
17 context of the questioning there.

18 THE COURT: I prefer not to try
19 such cases as these non-jury, generally,
20 because I think that on balance, is a very
21 short case and we would be through within a
22 day and I would prefer that it would be
23 tried before a jury.

24 You can make your arguments. Keep
25 them within what is legal and I believe Mr.

1
2 Brackley, on balance, it would be much more
3 satisfactory to have a jury and so I would
4 prefer not to try the case non-jury.

5 You consented to it, didn't you?

6 MR. WEINTRAUB: That is correct.

7 THE COURT: He doesn't care one way
8 or the other.

9 MR. BRACKLEY: I go along with your
10 Honor.

11 However, your Honor, he cannot explain
12 himself to a jury but he can to a Judge.

13 THE COURT: I don't know that that
14 necessarily follows.

15 When he gets on the stand and these
16 other matters come out, that is not good
17 either. Let's face it. We are all human.

18 MR. BRACKLEY: That's right.

19 THE COURT: Here you have one man
20 who has to decide whether he is guilty
21 or not. The other way you have twelve.

22 I think on balance you would be
23 better off. You've got twelve.

24 I'm sorry. I think --

25 MR. BRACKLEY: Let me go and talk to

